301 NLRB No. 156

CDO

D--1827
Inglewood, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

PACIFIC ASCORP

and

Case 31--CA--18238

SOUTHERN CALIFORNIA DISTRICT COUNCIL
OF LABORERS, AFFILIATED WITH LABORERS'
INTERNATIONAL UNION OF NORTH AMERICA,
AFL--CIO

and

PLASTER TENDERERS, CONSTRUCTION AND
GENERAL LABORERS, LOCALS 300 AND 802
Parties to the Contract

DECISION AND ORDER

By Members Cracraft, Devaney, and Oviatt

Upon a charge filed by Southern California District Council of Laborers, affiliated with Laborers' International Union of North America, AFL--CIO, the Union, on May 2, 1990, the General Counsel of the National Labor Relations Board issued a complaint on October 24, 1990, against Pacific Ascorp, the Respondent, alleging that it had violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On December 17, 1990, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On December 19, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion therefore are undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated December 4, 1990, informed the Respondent of its obligation to file an answer and stated that unless an answer was filed by December 12, 1990, a Motion for Summary Judgment would be filed.[1] The Respondent has failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a California corporation with an office and principal place of business in Inglewood, California, is engaged in asbestos removal services. Annually, in the course and conduct of its business operations, the

[1] The General Counsel's motion further alleges that on December 5, 1990, counsel for the General Counsel had a telephone conversation with the Respondent's counsel during which he stated that the Respondent would not file an answer to the complaint, and during which counsel for the General Counsel again notified him that she would file a Motion for Summary Judgment. Counsel for the General Counsel confirmed this telephone conversation in a letter to the Respondent dated December 5, 1990.

Respondent sells goods or services valued in excess of $50,000 to exempt entities within the State of California, which exempt entities themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standard. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.[2]

II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All asbestos removal workers, including leadmen.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

About March 28, 1989, pursuant to the provisions of Section 8(f) of the Act, the Respondent and the Union entered into a collective-bargaining agreement, effective by its terms from March 28, 1989, to March 28, 1990. About October 1, 1989, pursuant to the provisions of Section 8(f) of the Act, the Respondent and the Union entered into another collective-bargaining agreement, and an addendum, effective by its terms from October 1, 1989, to October 1, 1990. By virtue of the principles established by the Board in John Deklewa & Sons, Inc., 282 NLRB 1375 (1987), enfd. sub nom. Iron Workers Local 3 v. NLRB, 843 F.2d 770 (3d Cir. 1988), the Union has been the limited, exclusive collective-bargaining representative for the employees in the unit described above, for the purposes of collective bargaining concerning rates of

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[2] The complaint refers to Southern California District Council of Laborers and Plaster Tenderers, Construction and General Laborers, Locals 300 and 802, collectively as the Union.

pay, wages, hours of employment, and other terms and conditions of employment. The Respondent, by virtue of Section 8(f) of the Act, had a continuing obligation to give full force and effect to all provisions of the collective-bargaining agreements during the terms of those agreements.

Commencing about November 2, 1989, the Respondent has refused to bargain collectively with the Union as the limited exclusive collective-bargaining representative of all the employees in the unit described above by repudiating certain provisions of the collective-bargaining agreements as set forth below:

(a) Since about November 2, 1989, the Respondent has failed and refused to make contributions, as required by the collective-bargaining agreements described above, to the Laborers' National Health and Welfare Fund, the Laborers' National Pension Fund, the Laborers'-Employers' Cooperative Education Trust Fund, the Southern California Laborers' Vacation Trust Fund, and the Southern California Laborers' Training and Trust Fund.

(b) Since about March 12, 1990, by letter stating the Respondent ''withdrew,'' the Respondent repudiated the collective-bargaining agreements described above. (c) Since about March 12, 1990, the Respondent has failed and refused to comply with the notice provisions for employees not hired through the hiring hall and the security clause contained in the collective-bargaining agreements described above.

(d) Since about March 21 and more specifically on March 21 and 28 and April 30, 1990, the Respondent has failed and refused to abide by the grievance and arbitration provisions of the collective-bargaining agreements described above, by failing to respond to the Union's written requests to grieve and arbitrate, inter alia, the contractual obligations alleged above.

By the acts and conduct described above, the Respondent refused to bargain collectively in good faith with the Union as the limited, exclusive

collective-bargaining representative of the employees in the unit, and thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Conclusions of Law

1. By failing and refusing since on or about November 2, 1989, to make contributions to the Laborers' National Health and Welfare Fund, the Laborers' National Pension Fund, the Laborers'-Employers' Cooperative Education Trust Fund, the Southern California Laborers' Vacation Trust Fund, and the Southern California Laborers' Training and Trust Fund, as required by the collective-bargaining agreements with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

2. By repudiating, since on or about March 12, 1990, the collective-bargaining agreements with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

3. By failing and refusing, since about March 12, 1990, to comply with the notice provisions for employees not hired through the hiring hall and the security clause contained in the collective-bargaining agreements with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

4. By failing and refusing, since about March 21 and more specifically on March 21 and 28 and April 30, 1990, to abide by the grievance and arbitration provisions of the collective-bargaining agreements, by failing to respond to the Union's written requests to grieve and arbitrate the contractual violations alleged above, the Respondent has engaged in unfair labor practices

affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make whole its unit employees by making all fringe benefit contributions to the various funds as provided by the collective-bargaining agreements with the Union, which have not been paid,[3] and by reimbursing employees for any expenses ensuing from the Respondent's failure to make such contributions as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). We also shall order the Respondent to make whole unit employees for any losses suffered by reason of the Respondent's repudiation of the collective-bargaining agreements until their expiration, such sums to be computed in the manner prescribed in Ogle Protection Service, 183 NLRB 682 (1970). All payments to the employees shall be made with interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). In accordance with Deklewa, supra at 1375, we shall not extend this make-whole remedy beyond the expiration dates of the 1989--1990 collective-bargaining agreements.

We also shall order the Respondent to comply retroactively with the collective-bargaining agreements until their expiration and, on request, to

[3] Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our ''make-whole'' remedy. Merryweather Optical Co., 240 NLRB 1213 (1979).

respond to the Union's written requests to grieve and arbitrate the contractual violations alleged above.

ORDER

The National Labor Relations Board orders that the Respondent, Pacific Ascorp, Inglewood, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Southern California District Council of Laborers, affiliated with Laborers' International Union of North America, AFL--CIO and Plaster Tenderers, Construction and General Laborers, Locals 300 and 802 as the limited exclusive representative of the employees in the appropriate unit described below, by failing and refusing to make contributions to the Laborers' National Health and Welfare Fund, the Laborers' National Pension Fund, the Laborers'-Employers' Cooperative Education Trust Fund, the Southern California Laborers' Vacation Trust Fund, and the Southern California Laborers' Training and Trust Fund, as required by the collective-bargaining agreements until their expiration.

The unit is:

INCLUDED: All asbestos removal workers, including leadmen.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

(b) Refusing to bargain collectively with the Union by repudiating the collective-bargaining agreements during the terms of those agreements.

(c) Failing and refusing to comply with the notice provisions for employees not hired through the hiring hall and the security clause contained in the collective-bargaining agreements until their expiration.

(d) Failing and refusing to abide by the grievance and arbitration provisions of the collective-bargaining agreements, by failing to respond to

the Union's written requests to grieve and arbitrate the alleged contractual violations referred to above, as required by the collective-bargaining agreements until their expiration.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the unit employees by making contributions to the fringe benefit funds as required by the collective-bargaining agreements with the Union until their expiration, and by reimbursing, with interest, the unit employees for any expenses ensuing from the failure to make such contributions, in the manner set forth in the remedy section of this decision.

(b) Make whole the unit employees for any losses suffered as a result of the Respondent's repudiation of the collective-bargaining agreements, in the manner set forth in the remedy section of this decision.

(c) Comply retroactively with the terms and conditions of the collective-bargaining agreements until their expiration.

(d) Abide by the grievance and arbitration provisions of the collective-bargaining agreements by, on request, responding to the Union's written requests to grieve and arbitrate alleged contractual violations.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(f) Post at its facility in Inglewood, California, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other materials.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 28, 1991

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] If this Order is enforced by a judgment of a United States courts of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Southern California District Council of Laborers, affiliated with Laborers' International Union of North America, AFL--CIO and Plaster Tenderers, Construction and General Laborers, Locals 300 and 802 as the limited, exclusive bargaining representative of our employees in the unit set out below, by failing and refusing to make contributions to the Laborers' National Health and Welfare Fund, the Laborers' National Pension Fund, the Laborers'-Employers' Cooperative Education Trust Fund, the Southern California Laborers' Vacation Trust Fund, and the Southern California Laborers' Training and Trust Fund; by repudiating the collective-bargaining agreements during their terms; by failing and refusing to comply with the notice provisions for employees not hired through the hiring hall and the security clause; and by failing and refusing to abide by the grievance and arbitration provisions, all as required by the collective-bargaining agreements with the Union until their expiration. The unit is:

INCLUDED: All asbestos removal workers, including leadmen.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our employees in the unit set out above by making contributions to the fringe benefit funds as required by our collective-bargaining agreements with the Union until their expiration, and WE WILL reimburse, with interest, the unit employees for any expenses ensuing from our failure to make such contributions.

WE WILL make whole our employees, with interest, for any losses suffered by reason of our repudiation of the collective-bargaining agreements.

WE WILL comply retroactively with the terms of our collective-bargaining agreements with the Union until their expiration.

WE WILL, on request, respond to the Union's March 21, 28, and April 30, 1990 written requests to grieve and arbitrate allege contract violations.

PACIFIC ASCORP
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(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 11000 Wilshire Boulevard, Room 12100, Los Angeles, California 90024-3682, Telephone 213--575--7357.